

Message Text

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ACTION L-02

INFO OCT-01 ARA-06 ISO-00 JUSE-00 DEAE-00 SNM-02 SCA-01

DRC-01 RSC-01 SSO-00 /014 W
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P 121115Z OCT 74

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC PRIORITY 6006

LIMITED OFFICIAL USE SECTION 1 OF 2 BRASILIA 7843

E.O.11652: N/A

TAGS: SNAR, BR

SUBJECT: EXTRADITION OF FRANCISCO ULISSES SCOCOZZA-VALIENTE

REF: A. STATE 214761 B. BRASILIA 7413

1. USG LAWYER PEIPER SUBMITTED ADDITIONAL EVIDENCE BROUGHT BY DEA AGENT DENNIS J. PERRY TO ATTORNEY GENERAL'S OFFICE. SCOCOZZA-VALIENTE'S LAWYER REQUESTED THE ADDITIONAL DOCUMENTATION NOT BE ACCEPTED BUT HIS REQUEST WAS REFUSED. AFTER EXAMINING THE DOCUMENTATION THE ATTORNEY GENERAL ON OCTOBER 8 ISSUED AN OPINION WHICH FREELY TRANSLATED IS AS FOLLOWS:
NO. 592557
EXTRADITION REQUEST NO. 300 - UNITED STATES OF AMERICA

REPORTER: H.E. MINISTER LEITAO DE ABREU
PETITIONER: GOVERNMENT OF THE UNITED STATES OF AMERICA
EXTRADITEE: FRANCISCO ULISSES SCOCOZZA-VALIENTE
MINISTER REPORTER:

AS PER ARTICLE 208, SINGLE PARAGRAPH, OF THE INTERNAL REGULATIONS, THE TEXT OF WHICH IS NOT EXPRESSED IN THE SENSE OF FIXING THE OPPORTUNITY FOR INTERVENTION OF THE PETITIONING STATE IN THE EXTRADITION REQUEST, THE FEDERAL PUBLIC MINISTRY PERMITS ITSELF TO REFUSE, PRELIMINARILY THE DEFENSE'S
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REQUEST (PAGES 353/354). WHICH INTENDS TO WITHDRAW

DOCUMENTS SUBMITTED IN THE PROCESS BY THE GOVERNMENT
OF THE UNITED STATES OF AMERICA (PAGES (283/351).

ALL THE DOCUMENTS REFERRED TO WERE EXAMINED BY
THE OFFICE OF THE ATTORNEY GENERAL WHO RATIFIES,
NEVERTHELESS, THE JUDGMENT ON PAGES 277/280, FOR
THE FOLLOWING REASONS:

1. THE FORCE OF THE LEGAL TEXT, INTERPRETED
WITH ELEMENTARY LOGIC, JUSTIFIED ON THE BASIS
OF ALL PRECEDENTS OF THE SUPREME COURT THE
ASSERTION, EITHER EXPLICIT OR IMPLICIT, THAT THE
APPROVAL OF THE EXTRADITION PRESUPPOSES THE
ABSENCE OF DOUBT REGARDING THE IDENTITY OF
THE EXTRADITEE.

NO PROBLEM CAME TO LIGHT IN THE GREAT MAJORITY
OF THE CASES WHERE UPON BEING INTERROGATED, THE
EXTRADITEE ADMITS TO BEING THE PERSON SOUGHT,
LIMITING CONSIDERATIONS OF THE EXTRADITEE
TO THE AUTHORSHIP OR THE CIRCUMSTANCES OF
THE CRIMINAL DEED.

IN THE CASE BEFORE US THE EXTRADITEE, ADDED
TO HIS PRELIMINARY DENIAL OF IDENTITY, HAS
PROOF OF HAVING A BROTHER WITH PRACTICALLY
THE SAME NAME, AND PHYSICAL RESEMBLANCE AND
WITH CRIMINAL RECORD.

IN SUCH A CIRCUMSTANCE, THIS ATTORNEY GENERAL'S
OFFICE UNDERSTOOD THAT ONLY AN INDIVIDUAL
FINGERPRINT RECORD OF THE CITIZEN BEING SOUGHT
WOULD BE ABLE TO ELIMINATE THE DOUBT. AND ON
THE BASIS OF THIS UNDERSTANDING, IT CONSIDERS
SUPERFLUOUS THE INVESTIGATION REQUIREMENT, IN
THE FACE OF THE CERTAINTY THAT THE AUTHORITIES
OF THE PETITIONING STATE DO NOT POSSESS SUCH
A DOCUMENT, FOR THE SIMPLE REASON THAT THEY HAD
NEVER CARRIED OUT THE CRIMINAL IDENTIFICATION
OF THE PERSON THEY ARE SEEKING, AND WHOSE ENTRY
INTO AMERICAN TERRITORY IS NOT A MATTER OF
RECORD.

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AT NO TIME DID THIS ATTORNEY GENERAL'S OFFICE
DOUBT THAT THE INDIVIDUAL FINGERPRINT RECORD OF
THIS CITIZEN NOW BEFORE THE SUPREME COURT,
AS WELL AS THAT OF HIS BROTHER, COULD BE FOUND
IN THE HANDS OF URUGUAYAN AUTHORITIES.
THE PETITIONING STATE OBTAINED THOSE
FROM THE LATTER, AND NOW BRINGS THEM TO THE

PROCESS WITHOUT REVOKING, HOWEVER, THE BASIC CONCLUSION THAT EVERYTHING WHICH POINTS TO THE EXTRADITEE AS BEING THE PERSON REALLY SOUGHT IS STATEMENTS OF WITNESSES, OBTAINED BY PRESENTING PHOTOGRAPHS.

WITH REGARD TO THE IDENTITY, WITHIN THE EXTRADITION PROCESS, NOTHING LED THE FEDERAL AUTHORITIES TO BELIEVE THAT THE SUPREME COURT COULD LET GO OF THE CERTAIN IN ORDER TO CONTENT ITSELF WITH THE SIMPLY PROBABLY. THEREFORE, IT CEASED REQUESTING THE INVESTIGATION, THE SUPERFLUOUS NATURE OF WHICH, NOW MORE THAN EVER, SEEMS DEMONSTRATED.

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ACTION L-02

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2. IN A SECOND CONTEXT, OUTSIDE THE QUESTION OF IDENTITY, IT REMAINS THAT THE EXTRADITEE IS ACCUSED BY THE CRIME OF CONSPIRACY, LEADING TO THE INTRODUCTION OF DRUGS INTO THE UNITED STATES OF AMERICA. THE REPRESENTATIVE OF THE AMERICAN GOVERNMENT LABORS IN EVIDENT ERROR WHEN, AT PAGES 286/287, INTERPRETING ARTICLE 88, ITEM 2, OF DECREE-LAW 941/69, IT SUPPOSES THE EXTRADITION TO BE VIABLE WHEN THE DEED IMPUTED TO THE EXTRADITEE IS DEFINED AS A CRIME ONLY IN THE LAWS OF THE PETITIONING STATE. THE LACK OF TYPICALNESS OF CONSPIRACY IN THE BRAZILIAN PENAL CODE IS

WHAT GAVE REASON TO THE ASSERTION OF LACK OF BASIS OF THE REQUEST, SINCE THERE WAS NOT DESCRIPTION OF ANY AKIND OF WHAT THERE MIGHT HAVE BEEN IN THE WAY OF AN ATTEMPT AT ILLICIT IMPORTATION.

3. IT WAS FOR THE CRIME OF CONSPIRACY ALONE, COVERED IN AMERICAN LAW AND NOT FOUND IN BRAZILIAN LAW, THAT THE EXTRADITION REQUEST WAS MADE.

THE ACCUSATION (PAGES 63/66) REFERRED, HOWEVER, TO CERTAIN "MANIFEST ACTIONS" (POSSESSION, PURCHASE AND SALE OF NARCOTICS), CRIMES IN LIMITED OFFICIAL USE

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AND OF THEMSELVES, ALSO DEFINED BY THE BRAZILIAN PENAL CODE. THESE, HOWEVER, SINCE THEY WERE COMMITTED ONLY IN URUGUAYAN TERRITORY, WOULD NOT BE UNDERSTOOD, IN THEORY, AS BEING SUBJECT TO THE PENAL CODE OF THE PETITIONING STATE. ONLY AT THE LAST MINUTE WAS THERE INTRODUCED INTO THE CASE ANY INFORMATION ON THE LEGAL BASIS WHICH MAKES AMERICAN PENAL LAW PERTINENT TO CRIME OF THAT KIND, COMMITTED ABROAD.

4. IT IS REPEATED THAT, WITH REGARD TO CONSPIRACY WITH A VIEW TO CONTRABAND, IT SEEMS CLEAR THAT AMERICAN LAW CONSIDERS ITSELF APPLICABLE WHEREVER (THE CONSPIRACY) OCCURS, THUS BEING INDIFFERENT AS TO WHETHER THE CONSPIRACY OCCURS WITHIN THE UNITED STATES OF AMERICAN, OR IN URUGUAY, OR ON THE HIGH SEAS.

THAT CRIMINAL DEED, THE ONLY ONE IN WHICH THE EXTRADITION REQUEST EXPRESSLY BASES ITSELF, IS WITHOUT DOUBT SUBJECT TO THE PENAL CODE - AND, CONSEQUENTLY, TO THE CRIMINAL JURISDICTION OF THE PETITIONING STATE. IT IS NOT, HOWEVER, DEFINED AS A CRIME BY BRAZILIAN LAW, EVEN UNDER SOME OTHER NAME. THUS ARISES THE RELEVANCE OF THE IMPENDING CIRCUMSTANCE EXPRESSED IN ARTICLE 88, II, OF THE DECREE LAW 941/69 THE TEXT OF WHICH SHOWS COMPATIBILITY WITH WHAT IS CONTAINED IN THE TREATY OF EXTRADITION IN FORCE BETWEEN THE UNITED STATES OF AMERICA AND BRAZIL.

5. WITH THESE ADDITIONAL CONSIDERATIONS, IN VIEW OF THE DOCUMENTATION SUBMITTED TO THE PROCESS BY THE GOVERNMENT OF THE PETITIONING STATE, THE OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC CONFIRMS ITS JUDGMENT FOR THE DENIAL OF THE REQUEST.

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BRASILIA, OCTOBER 8, 1974

JOSE FRANCISCO REZEK
ATTORNEY OF THE REPUBLIC

I APPROVE:
J.C. MOREIRA ALVES
ATTORNEY GENERAL OF THE REPUBLIC

2. THE FINAL HEARING BEFORE FULL COURT WITH ARGUMENTATION BY THE ATTORNEY GENERAL AND USG LAWYER PEIPER IS SCHEDULED FOR NEXT WEDNESDAY OR THURSDAY.

3. COMMENT: PEIPER FEELS OUR POSITION HAS BEEN WEAKENED BY THE ATTORNEY GENERAL'S REBUTTAL OF THE ADDITIONAL DOCUMENTATION AND THE CURRENT PROBLEM WITH GOB CONCERNING THE ARREST AND CONFINEMENT OF FREDERICK MORRIS IN RECIFE. IN VIEW OF ATTORNEY GENERAL'S PREVIOUS OPINION (BRASILIA 7413) AND THE MORRIS CASE BEING BATTED ABOUT IN LOCAL PRESS, PEIPER BELIEVES IT WILL BE EXTREMELY DIFFICULT TO CONVINCE JUSTICES TO VOTE FOR EXTRADITION OF SCOCOZZA-VALIENTE TO U.S.
CRIMMINS

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